

10/523,153

ATTORNEY DOCKET  
NO. 83950**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**Applicants: **BIRD et al.**Appln. No.: **10/523,153**Filed: **January 27, 2005**Title: **A BULK COMMUNICATIONS  
PROCESS USING MULTIPLE  
DELIVERY MEDIA**

Group

Art Unit: **Not Yet Assigned**Examiner: **Not Yet Assigned**Customer Number : **22242****CERTIFICATE OF MAILING BY "EXPRESS MAIL"**

"Express Mail" Mailing Label Number:

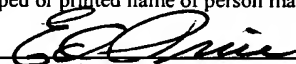
EV 513604936 US

Date of Deposit October 6, 2005

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" Service under 37 CFR §1.10 on the date indicated above and is addressed to the Mail Stop **PETITION**, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

ED PRICE

(Typed or printed name of person mailing)

  
 (Signature of person mailing)

Mail Stop **PETITION**  
 Commissioner for Patents  
 P. O. Box 1450  
 Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. §1.47(a)**

Sir:

The above-identified US national phase application of PCT/AU2003/000954, was filed January 27, 2005, in the United States Patent and Trademark Office. The subject application was filed with an unsigned Declaration and is subject to a Notification of Missing Requirements requiring an executed Declaration. Seven inventors are named on the present application. Five inventors has signed the Declaration and two inventors, Kevin Bryan Levine and Michael Robert Stewart, refused to sign. It is hereby requested that the enclosed Declaration signed by five inventors be accepted under 37 C.F.R. §1.47(a) due to the refusal of the joint inventors Levine and Stewart to sign.

The last known address of joint inventor Levin is:

Mr. Kevin Bryan Levine  
 36a Roe Street  
 North Bondi, NSW 2026 Australia

The last known address of joint inventor Stewart is:

Mr. Michael Robert Stewart  
7 Foss Street  
Glebe, NSW 2037 Australia

Mr. Levine and Mr. Stewart were employees of Trade Wind Marketing PTY Limited at the time when the invention, which resulted in the priority application, was made. Trade Wind Communications was an assignee of the invention by virtue of a deed of assignment dated July 26, 2002 (copy enclosed herewith), and filed an international application number PCT/AU2003/000954 on July 29, 2003. As former employees of Trade Wind Marketing PTY Limited, and because of a signed general invention Deed of Assignment, inventors Levine and Stewart are obliged to sign papers necessary to complete the filing of patent applications. A number of attempts was made to obtain the signatures of Mr. Levine and Mr. Stewart, as indicated in the enclosed Statutory Declarations signed by Mr. Frank A. Favretto, the Chairman of the Board of Directors of Trade Wind Communications Limited, and by Mr. Neville Zammit, a Secretary of Trade Wind Communications Limited, however, Mr. Levine and Mr. Stewart have refused to sign the Declaration.

This Petition is accompanied by the following documents:

1. Declaration signed by five joint inventors, Nicholas R. Bird, Robert Silver, Alexander J. Omillian, Paul H. Ginns, and Michael Markham;
2. Statutory Declaration signed by Mr. Frank Anthony Favretto, the Chairman of the Board of Directors of Trade Wind Communications Limited who attempted to obtain a signature on the Declaration from Mr. Levine;
3. Employment Contract of Michael Stewart with Trade Wind Marketing Pty Ltd, indicating Intellectual Property Proprietary Rights on page 4 thereof;
4. Deed of Release between Kevin Levine and Trade Wind Group PTY Limited and Trade Wind Communications Limited, indicating Intellectual Property rights on page 3 thereof;
5. Deed of Assignment of July 26, 2002, between Trade Wind Marketing PTY Limited and Trade Wind Communications Limited relating to the subject matter of present invention; and
6. Statutory Declaration signed by Mr. Neville Zammit, a Secretary of Trade Wind Communications Limited, who attempted to obtain a signature on the Declaration from Mr. Stewart.

Applicants hereby request that conduct of the inventors Levine and Stewart be construed as a refusal to sign and that the included Declaration signed by five joint inventors be accepted on behalf of all the inventors of the above-identified US application.

The Commissioner is hereby authorized to charge Deposit Account 06-1135 with the petition fee in the amount of \$130.00 (*Trans. No. 25433*) for filing the present Petition, and any additional fees which may be required in this application under 37 C.F.R. §§1.16-1.17 during its entire pendency, or credit any overpayment, to Deposit Account No. 06-1135. Should no proper payment be enclosed herewith, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1135. A duplicate copy of this request is enclosed.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

By Kenneth H. Samples  
Kenneth H. Samples  
Registration No. 25,747

Date: October 6, 2005

120 South LaSalle Street  
Suite 1600  
Chicago, Illinois 60603-3406  
Telephone: (312) 577-7000  
Facsimile: (312) 577-7007

In the matter of International Patent  
application no. PCT/AU2003/000954

- and -

In the matter of United States Patent  
application serial number 10/523,153

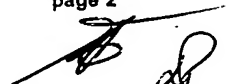
## Statutory declaration

I, Frank Anthony Favretto, a citizen of Australia, of 110 Raglan Street, Mosman, 2088, NSW, Australia do solemnly and sincerely declare as follows:

- 1 I am currently the Chairman of the Board of Directors of Trade Wind Communications Limited (Trade Wind Communications) and I have been the Chairman since March 2003. I am also a director of ConnXion (Australia) Pty Limited, which was previously named Trade Wind Marketing Pty Limited (ConnXion) and have also been a director of this company since March 2003. ConnXion is a wholly owned subsidiary of Trade Wind Communications.
- 2 On 29 July 2002 an Australian patent application entitled "A Bulk Communications Process Using Multiple Delivery Media" was filed in the name of Trade Wind Communications. This application was allocated patent application number 2002950435 (the priority application). Seven inventors were named in the priority application, namely Nicolas Rowland Bird, Kevin Bryan Levine, Robert Silver, Michael Robert Stewart, Alexandra John Omillian, Paul Huntley Ginns and Michael Markham (the inventors).
- 3 The invention which became the subject matter of the priority application represented one of the results of the research and development carried out by ConnXion. The inventors were employees of ConnXion at the time the invention which resulted in the filing of the priority application was devised. Trade Wind Communications was the assignee of the invention by virtue of a deed of assignment entered into on 26 July 2002, a copy of which is attached as exhibit FF1.
- 4 On 29 July 2003 Trade Wind Communications filed an international patent application under the Patent Cooperation Treaty claiming priority from the priority application. This application was allocated international application number PCT/AU2003/000954 (the PCT application). The United States patent application serial number 10/523,153 (the US application) is a national phase application based on the PCT application. I will refer to the technology described in these applications as "the technology".
- 5 Shortly after the US application was filed, I was informed that the signature of all the inventors was required on a declaration and power of attorney form (the US declaration) to complete the filing formalities for the US application.
- 6 Of the seven inventors, five have been cooperative during the patent application process and have signed all the documentation that they have been asked to sign, including the US declaration. Two of the inventors, Michael Robert Stewart (Mr Stewart) and Kevin Bryan Levine (Mr Levine) have not been cooperative, and specifically have refused to sign the US declaration, as I outline below.
- 7 Mr Stewart was employed by ConnXion to develop products for ConnXion, and the invention was made in the course of his employment. A copy of Mr Stewart's employment

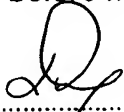
contract is attached as exhibit FF2. Mr Stewart's employment contract stipulates that any invention made during the course of his employment will be owned by ConnXion.

- 8 Mr Stewart was employed by ConnXion until September 2003. Mr Stewart was one of the senior technical people involved in the development of the technology and would likely have been involved in the preparation of the patent application. ConnXion has only filed patent applications relating to the technology and therefore Mr Stewart must know that the US application describes and claims the technology.
- 9 Mr Levine was a director of ConnXion and a director and employee of Trade Wind Group Pty Ltd (Trade Wind Group). Trade Wind Group is a wholly owned subsidiary of Trade Wind Communications. In these capacities Mr Levine's duties included the development of products for ConnXion, and the invention was made in the course of these duties. I have not been able to locate an employment contract for Mr Levine, but have been able to locate a Deed of Release (the Deed) that he signed during the process of his departure from ConnXion and Trade Wind Group in 2003. A copy of the Deed is attached as exhibit FF3. The Deed stipulates that Mr Levine acknowledges that Trade Wind Group is the exclusive owner of any invention made during the course of his employment.
- 10 Mr Levine terminated his positions with ConnXion and Trade Wind Group in November 2003, after the PCT application was filed. In 2002 and 2003 Mr Levine was responsible for managing the intellectual property protection and patent process for Trade Wind Communications. In his role Mr Levine was provided with a copy of the PCT application and is aware of what the PCT application and the US application describes and claims.
- 11 I have personally made a number of attempts to obtain the signature of Mr Stewart on the US declaration. I met with Michael Robert Stewart (Mr Stewart) on 1 June 2005 at the Thistle Selfridge Hotel in London. Prior to this I had been advised by Neville Zammit, the Secretary of Trade Wind Communications that he had spoken to Mr Stewart by phone and that Mr Stewart had declined to sign any documents in relation to the technology.
- 12 At the meeting in London I made it clear to Mr Stewart that the purpose of my meeting with him was to pursue the execution of the US declaration and the execution of an assignment for the purposes of the US application. I also made it clear to Mr Stewart that I was meeting with him pursuant to legal advice that Trade Wind Communications had to use its best endeavours to obtain his signature before unilaterally pursuing other options.
- 13 In response Mr Stewart declined to execute the US declaration or the assignment. I then advised Mr Stewart that Trade Wind Communication Limited would pursue other options but Mr Stewart answered "I don't care, I can't bring myself to sign it".
- 14 In an attempt to obtain the signature of Mr Levine on the US declaration I requested Mr Neville Zammit, the Secretary of Trade Wind Communications to approach Mr Levine and obtain his signature. Mr Zammit was not successful. I attach as exhibit FF4 a copy of Mr Zammit's declaration, which details his efforts to obtain Mr Levine's signature and Mr Levine's refusal to sign the US declaration.
- 15 I believe that the conduct of both Mr Stewart and Mr Levine constitutes a refusal to sign the US declaration.
- 16 I am not aware of any reason why Trade Wind Communications Limited is not entitled to derive full title to the US application from all of the inventors, including both Mr Stewart and Mr Levine.
- 17 I hereby declare that all statements made herein of my own knowledge are true, and that all statements made herein on information and belief are believed to be true; and further that these statements were made with the knowledge that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such wilful false statements may jeopardise the validity or enforceability of the application or any patent issued thereon.



And I make this solemn declaration by virtue of the Australian Statutory Declarations Act 1959 and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

Declared at Sydney  
this  
day of September  
2005, before me:

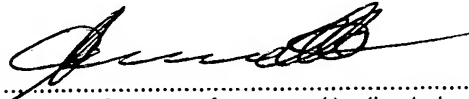


Signature of person before whom the declaration is made

Kristen Percy  
Solicitor

MLC Centre, Sydney, Australia


Title of person before whom the declaration is made



Signature of person making the declaration

FRANK FAVRETTO

Full name of declarant



**In the matter** of International patent  
application no. PCT/AU2003/000954

- and -

**In the matter** of United States patent  
application serial number 10/523,153

## **EXHIBIT**

The attached is Exhibit FF1 referred to in the Statutory Declaration of Frank Favretto declared on  
the    day of September 2005.

Before me:



.....  
*Signature of person before whom the declaration is made*

Kristen Percy  
Solicitor

MLC Centre, Sydney, Australia

.....  
*Title of person before whom the declaration is made*



**DEED OF ASSIGNMENT**

THIS DEED made this 26 day of July 2002

**BETWEEN:** TRADE WIND MARKETING PTY LIMITED (ABN 78 052 100 455) of Level 14, 210 George Street, Sydney NSW 2000 (Trade Wind Marketing)

**AND:** TRADE WIND COMMUNICATIONS LIMITED (ARBN 076 753 083) of Level 14, 210 George Street, Sydney NSW 2000 (Trade Wind Communications)

**BACKGROUND:**

- A. Trade Wind Marketing is a subsidiary of Trade Wind Communications.
- B. Trade Wind Marketing has agreed to assign to Trade Wind Communications certain patent and other intellectual property rights.

**THE PARTIES AGREE:**

**1. ASSIGNMENT**

In consideration for payment of the sum of \$1.00 paid by Trade Wind Communications to Trade Wind Marketing, Trade Wind Marketing as assignor:

- (a) assigns to Trade Wind Communications all right, title and interest to all intellectual property rights, including without limitation copyrights, patents, trade marks, designs, and similar industrial, commercial and intellectual property, and including future copyright, in and relating in any way to the emdirect process method and system for bulk communication of information to a single set of recipients via multiple delivery media (fax, email, sms and surface mail) based on the recipient's delivery preferences, and incorporating escalation, delivered as a web service (Assigned Intellectual Property Rights); and
- (b) agrees to do all things necessary to effect the assignment in paragraph (a).

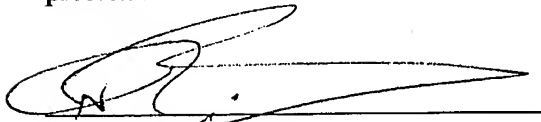


2. GOVERNING LAW

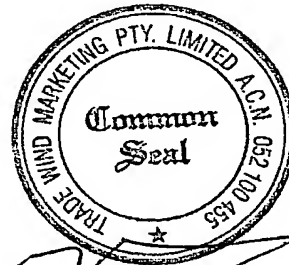
This Deed is governed by the laws of New South Wales, Australia and the parties irrevocably submit to the jurisdiction of the Courts of New South Wales, Australia.

EXECUTED as a Deed

THE COMMON SEAL of TRADE WIND MARKETING PTY LIMITED is fixed in the presence of:

  
Signature of Director

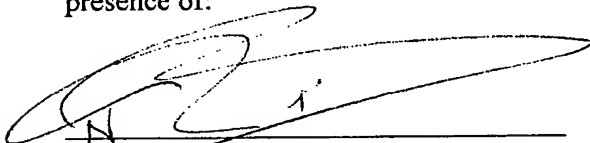
NICK BIRD  
Name of Director (print)



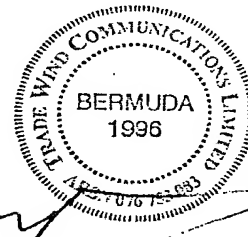
  
Signature of Director/Secretary

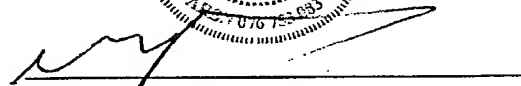
KEVIN LEVINE  
Name of Director/Secretary (print)

THE COMMON SEAL of TRADE WIND COMMUNICATIONS LIMITED is fixed in the presence of:

  
Signature of Director

NICK BIRD  
Name of Director (print)



  
Signature of Director/Secretary

KEVIN LEVINE  
Name of Director/Secretary (print)



**In the matter** of International patent  
application no. PCT/AU2003/000954

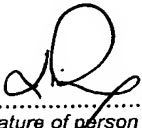
- and -

**In the matter** of United States patent  
application serial number 10/523,153

## **EXHIBIT**

The attached is Exhibit FF2 referred to in the Statutory Declaration of Frank Favretto declared on  
the     day of September 2005.

Before me:



.....  
*Signature of person before whom the declaration is made*

Kristen Percy  
Solicitor

MLC Centre, Sydney, Australia.....

.....  
*Title of person before whom the declaration is made*



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EMPLOYMENT CONTRACT

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Trade Wind Marketing Pty Ltd

And

Michael Stewart

A handwritten signature in black ink, appearing to be 'MS' or similar initials, located in the bottom right corner of the page.

**THIS CONTRACT OF EMPLOYMENT** is made on the date set out in Part 1 of Schedule A, and exists:

**BETWEEN** **THE PERSON** whose name and address is set out in Part 2 of Schedule A ("the Employee")

**AND** **THE COMPANY** whose name and address is set out in Part 3 of Schedule A ("the Employer")

The Employee and the Employer now wish to confirm the Employee's employment with the Trade Wind Group subject to the terms and conditions contained in this Agreement.

**IT IS AGREED AS FOLLOWS:**

**COMMENCEMENT & PROBATION**

*Commencement*

Subject to the you obtaining all the necessary licences, visas and work permits (if any), the Company hereby confirms that it appoints you, in the capacity as stated in Part 1 of Schedule A, on the Commencement Date, to serve the Company in undertaking the Duties of the Employee. You confirm such an appointment and agree to serve the Company as an Employee and perform the Duties of the Employee upon the terms and conditions contained in this Contract and the attached Schedule A.

*Probation*

For the purpose of assessing the suitability of each party to the other, a period of probation in accordance with Part 6 of Schedule A shall apply. During probation, your skills and ability to perform the tasks required of you shall be observed, as shall be your commitment to the Company and ability to assimilate into a new work environment. Likewise, this period should be used by you to gauge the Company's suitability. During probation, your employment may be terminated by you or the company, without validation, subject to the provision of notice due.

**DUTIES AND OBLIGATIONS OF THE EMPLOYEE**

You will be responsible for the performance of the duties set out in Schedule B.

The Company has the right to change your duties or reporting lines, or transfer you to another location or position provided that it is reasonably comparable to your current position. Any change to your duties or position will not change your other terms and conditions of employment.

It is a further requirement and condition of your employment that, in addition to the duties expressly or impliedly set out in Part 4 of Schedule A and Schedule B, you will:

- a) Conform to, observe and comply with the resolutions, policies (in force from time to time) procedures, regulations and lawful and reasonable directions made or given to you by the Company or any officer or employee, in relation to the business of the Company;
- b) Well and faithfully serve the Company and its related bodies corporate and use your best endeavours to promote the interests of the company, giving the full benefit of your knowledge, experience, technical skill and ingenuity to the Company;
- c) Devote all your time and attention during ordinary business hours as set out in Part 5 of Schedule A, to the discharge of your duties, except where prevented by sickness and excluding annual leave;
- d) Conform to the hours of work, which the Company, Directors or management reasonably require of you, without being entitled to receive additional remuneration for work performed outside normal business hours;
- e) Comply with all or any variations to this contract from time to time between yourself and the Company and subject always to the fact that you will use your best endeavours to comply with all reasonable requests of you by the company.

**HOURS OF WORK**

Your usual hours of work are set out in Part 5 of Schedule A. You may however, need to work outside usual working hours as reasonable and/or necessary to complete or perform your duties or as directed by the Company from time to time.

**REMUNERATION AND ENTITLEMENTS**

*Salary Package*

Your remuneration is set out in Part 7 of Schedule A. The Company shall meet all taxation obligations as required of them. Your salary will be payable on the 15<sup>th</sup> of each month, electronically deposited into your designated account held at a financial institution nominated by you. The processing of your pay, once submitted to the nominated financial institution, becomes the responsibility of that institution.

The Company will make superannuation contributions in accordance with the Commonwealth superannuation guarantee legislation. On joining the Company, you will be required to join the MLC Superannuation Plan. Full details of this fund will be made available to you upon your commencement with the Company.

*Annual Leave and Sick Leave*

In addition to the usual statutory public holidays, the Employee shall be entitled to Annual Leave at a time or times acceptable to the Directors and managers. All leave must be requested and authorised in writing at least four weeks prior to its taking.



*Annual Leave and Sick Leave (cont..)*

The entitlement to the Annual Leave accrues at the rate of 1.67 days per month, or twenty days per anniversary year. Annual Leave is cumulative from year to year. Further, it is our policy that annual leave may only be accessed subsequent to the completion of the first year of service, unless special circumstances exist. Please note that no more than 30 days of annual leave shall be allowed to accrue at any one time. Where annual leave accrues beyond 30 days, the employer retains the right to direct the employee to take the excess annual leave. Any variations to this to allow for exceptional circumstances will require special agreement by management. Payment for annual leave shall be at the ordinary rate of pay which applies at the time such leave is entered into. Payment for unused annual leave will only be made in the case of termination of the employment relationship by either party.

In the case of illness or other causes preventing you from performing the Duties of the Employee, you shall be entitled to 8 days paid sick leave per year. The entitlement to paid sick leave will accrue at the beginning of each anniversary year, other than your first year of service with the employer, when it shall only become available upon successful completion of your probationary period. Sick leave during probation shall be unpaid. All absences must be notified to management prior to 9am that day, or as soon as practicable. All sick leave must be authorised. Unauthorised sick leave shall count as unauthorised absence and may not be paid. Where unpaid absences, whether caused by illness or otherwise, can no longer be considered "temporary absence", the employer reserves the right to review your employment with this Company.

*Long Service Leave*

You shall be entitled to long service leave as provided in the Long Service Leave Act 1955 (NSW).

*Other Leave Entitlements*

You shall be entitled to all other leave benefits expressed within the Employer's policies, subject to receiving authorisation prior to accessing such leave. Authorisation must be in writing and obtained at least four (4) weeks prior to the taking of such leave, unless such leave is accessed for emergency purposes. Where such leave is accessed for emergency purposes, the Company retains the right to grant or withhold payment for such "other" leave taken. Where such leave is accessed for emergency purposes, you must immediately notify the Company of your absence.

*Motor Vehicle Allowance*

You may elect to apportion a component of your base salary as a Motor Vehicle Allowance. This needs to be done by yourself and the Tax Department. If you choose to do this, the Company will (upon approval from the Tax Department) pay you this amount in monthly installments on or before the fifteenth (15<sup>th</sup>) of each month. You will be responsible for payment of all maintenance and running expenses for the vehicle, including all petrol and service charges, insurances and registration.

*Performance/Salary Review*

Your Performance and Salary will be reviewed, in the first year, within 12 months of the satisfactory completion of the probationary period, and thereafter annually around the beginning of the new financial year. Performance/Salary reviews are not solely dependant upon the performance and productivity of the individual. Pending the overall performance, productivity, targets achieved and efficiencies of the Company, you may or may not receive a remuneration increase upon completion of your review. This remains at the discretion of the employer.

*Expenses*

On provision of all documentary evidence reasonably required by the Company, the Company will reimburse you for all reasonable travelling, accommodation and general expenses incurred by you in the performance of your duties in connection with the business of the Company and its related bodies corporate. Please refer to the Company's policies.

*Additional Benefits*

As stated in appointment letter and as set out in Part 8 of Schedule One. The Employer shall meet all taxation and superannuation obligations as required of them.

**NON-ACCEPTANCE OF INDUCEMENTS**

You will not accept any payment, reward or other benefit in money or in kind from any person as an inducement or reward for any act or forbearance in connection with any matter or business transacted by or on behalf of the Company or its related bodies corporate.

**CONFLICT OF INTEREST**

You must not participate in activities or decisions which conflict or appear to conflict, with your duties or responsibilities to the Company.

You represent and warrant that you will not without the prior written consent of the Company during the Employment either directly or indirectly in any capacity whatsoever (including without limitation as principal, agent, partner, employee, shareholder, unit holder, joint venturer, director, trustee, beneficiary, manager, consultant or adviser) carry on, advise, provide services to or be engaged, concerned or interested in or associated with any business or activity which is competitive with any business carried on by the Company or any of its related bodies corporate, or be engaged or interested in any public or private work or duties which in the reasonable opinion of the Company may hinder or otherwise interfere with the performance of your duties.

This however allows you to hold no more than 5% of the shares of any Company listed on a recognised stock exchange.

You agree to disclose any other business interests that you have had prior to, or during your employment with the Company if so required.

**CONFIDENTIALITY**  
*Employee's Acknowledgments*

*You acknowledge that:*

- a) the property of the Company and its related bodies corporate includes and will include all trade and business secrets and other confidential information and Documents relating to the affairs or business of the Company and its related bodies corporate or any person with whom you come into contact as a result of the Employment, or which come into your possession in the course of and by reason of the Employment, whether or not the same were originally supplied by the Company or its related bodies corporate ("Confidential Information");
- b) the Confidential Information has been and will be acquired by the Company or its related bodies corporate at the Company's or the related bodies corporate's initiative and expense; and
- c) the Company and its related bodies corporate have expended and will expend effort and money in establishing and maintaining their customer base, employee skills and the Confidential Information.

Accordingly, it is reasonable that you should enter into the representations and warranties contained in this letter and that if the Employment is terminated, you should continue to be subject to the "Confidentiality", and "Proprietary Rights" clauses below.

**Confidentiality**

Any information of any type acquired by you in the course of or incidental to your employment with the Company regarding the business, finances, secrets, dealings, transactions, affairs, property, policy, processes or activities of the Company and any Related Company including without limiting the generality of the foregoing all customer lists, designs or technical drawings, proofs and prints, computer software and programs, know how, ideas, diagrams, tables, marketing and sales procedure, pricing, accounting techniques, literary, artistic and personal information not in the public domain shall be treated as confidential information.

Whilst you are employed by the Company, you will:

- a) Not divulge either directly or indirectly to any person, persons, Company or companies, or make use of, for any purpose other than the business of the company, at any time either during the Employment or after the termination of this agreement, any confidential knowledge or privileged information shall at all times keep confidential all secrets of the Company and any Related Company howsoever or whensoever occurring except:
  - At the direction of the Company; and
  - Insofar as may be reasonably necessary in the course of performing the Duties of the Employee.
  - Where disclosure is required by law
- b) In recognition of the nature of this Confidential Information, you agree to take every precaution to safeguard and treat the information as confidential and take the appropriate action in your dealings with directors, officers and employees to ensure that confidential and the proprietary nature of the Confidential Information is maintained. Confidential Information that you receive, become acquainted with or create is to be maintained in a safe place and in confidence and you must use your best endeavours to prevent its unauthorised disclosure to, or use by, any other person or entity.
- c) If so requested by the Company, deliver to the Company all notes, memoranda, correspondence, Documents, lists of clients, papers and property of whatsoever kind or nature relating to the business of the Company or any Group Company or to any client of the Company or any Group Company, and will not retain any copies of any Documents or records or any material whatsoever or permit any copies to be retained or used by any other person or entity; and
- d) Under no circumstances, whether during employment or subsequent to employment with the Company, use such confidential information as defined, for personal gain.

This clause does not apply in respect of information which is publicly available or in respect of information that is reasonably expected that the public should already know.

This provision is intended to provide reasonable protection of the company's interests in respect of confidential information, our client's interests in respect of all confidential and business related information, and against subsequent competition and poaching of Company staff

**RESTRICTIVE CONVENANT/NON-SOLICITATION**

In consideration of the Salary and additional benefits to be paid to you by the Company under this Contract, you undertake to the Company that upon termination of this Agreement you will not, at any time, before during or after the employment relationship:-

- a) Use or disclose or publish any trade secrets, customer lists, product lists or confidential information belonging to the Company, which become known during employment by the Company;
- b) Will not for a period of one (1) year solicit or endeavour to solicit or entice away from the Company any employee of the Company to become an employee of or otherwise be associated with you or any Company or business with which you may become associated;
- c) Will not for a period of one (1) year solicit or endeavour to solicit or entice away business from any customer of the Company made known to you by Company during your employment with the Company or contacted you during your employment with the Company.
- d) Will not for a period of six (6) months, establish or engage in any consulting, employment or business in competition with the Company.

The Employee acknowledges that the restraints set out above are reasonable as to extent, duration and area, go no further than is required to protect the Company's business interests and its confidential information and do not restrict the Employee's rights to carry on his or her profession or trade.



## PROPRIETARY RIGHTS

The Company is entitled, solely and absolutely, to all copyright, patents, registered design rights, trade mark rights and other intellectual property rights (together, the "Intellectual Property") in, to and in relation to each and every article, design, drawing or other work, and each and every concept or idea, created, discovered or developed by you (whether alone or in conjunction with others) at any time during the course of your employment (whether within working hours or outside working hours). Providing that this does not include such Intellectual Property made pertaining to projects worked on by you for yourself with the knowledge and consent of the company. You further acknowledge and agree that:

- a) Full right, title and interest in and to existing and future copyright works and inventions, whether patentable or not, created by you will vest in the Company immediately on creation;
- b) Full right, title and interest in all other Intellectual Property is assigned to the Company by you;
- c) You shall promptly execute all documents and do all things necessary to vest or assign full right, title and interest in the Intellectual Property in and to the company; and
- d) You irrevocably and unconditionally waive all moral rights and any equivalent or analogous rights.
- e) You will not claim or attempt to claim, or assist or attempt to assist any other person to claim, any right, title or interest in and to any Intellectual Property; and
- f) Attach or oppose, or attempt to attach or oppose, or assist or attempt to assist any other person to attach or oppose, the company's claim in and to any Intellectual Property.

## TERMINATION

Should either party choose to terminate the employment relationship during a period of probationary employment, the party instigating the termination shall provide to the other, a period of one week's notice, or payment in lieu of.

Should either party choose to terminate the employment relationship subsequent to any period of probation the party instigating the termination shall provide to the other a period of four week's notice or payment in lieu of.

### *Termination by you*

During the Employment, you may terminate the Employment by giving at any time one month's written notice of termination. On termination of your employment by the Company you will be entitled to:

- a) Base Salary to the date of termination;
- b) Your entitlement (if any) to annual leave and long service leave up to the date of termination; and
- c) Repayment of any outstanding expenses actually and reasonably incurred by you in carrying out your duties under this Agreement.

### *Termination by the Company with notice*

Termination of employment with notice may be effected by the employer for performance-based reasons. For the purpose of this document, actions on the part of the employee warranting dismissal with notice shall include but not be limited to:

- a) Performing your duties in a manner which, in the reasonable opinion of the Company, is unsatisfactory and inconsistent with the reasonable standards required of you;
- b) ongoing disruptive behavior at the workplace, propensity to be a "trouble-maker", intimidation, making false accusations against other staff members,
- c) excessive absenteeism, unpaid absence no longer defined as "temporary"
- d) breach of any other policy and/or contract requirement of this company.
- e) Commit and act of bankruptcy or compound your debts with your creditors or are unable to pay your debt such that you no longer have the company's confidence in any financial matters pertaining to your employment.

### *Termination by the Company without notice*

This shall not affect the Company's right to terminate employment without notice for any significant breach or continued breach of the terms of this agreement or acts of misconduct, including but not limited to, physical or verbal aggression or abuse. For the purpose of this document, actions on the part of the employee warranting dismissal without notice shall include but not be limited to:

- a) commit any act of dishonesty, fraud, wilful disobedience, unprofessional behaviour or gross and wilful breach of duty (whether or not connected with the performance of your duties for the Company) which may adversely affect the Company;
- b) wilfully, persistently and materially breach any of the provisions of this Agreement or any other policy and/or contract requirement of the Company which you do not remedy within 14 days after receiving notice from the Company specifying the breach;
- c) engage in serious and/or wilful misconduct or professional misconduct or act grossly, negligently, unprofessionally or incompetently in the performance of your duties;
- d) engage in verbal or physical abuse, threats and use of profane language, and deliberate destruction of Company property;
- e) intoxication affecting the performance of your job
- f) Sexual harassment;
- g) are in ill-health certified by the Company's medical officer to be self-induced or as a result of taking drugs prohibited by law or the excessive consumption of alcohol; or
- h) are imprisoned and/or convicted of an indictable offence;
- i) without reasonable cause are unable to complete your duties as set out in Schedule B;



## **TERMINATION Cont...**

### ***Not to Prejudice Rights***

Termination of the employment will not prejudice any rights or remedies already accrued to either party under, or in respect of any breach of, the employment.

### ***Repayments of Amounts Owing***

If you resign, retire or have your employment terminated, you hereby authorise the Company to set off against, and deduct from, any amounts payable to you by way of salary, allowances, accrued leave, superannuation payments, retirement allowances or any other emoluments or benefits owed to you by the Company or related bodies corporate, any amount owing by you to the Company and its related bodies corporate whether those sums are due to be paid or not.

## **REDUNDANCY**

Should the situation of redundancy arise, the employer shall provide the employee an amount of severance payment in accordance with the Trade Winds Group policy on Redundancy and Severance in accordance with schedule C. Discussions shall take place prior to any changes being implemented within the workplace. Notice in the case of a redundancy situation may be worked out or paid out depending upon the needs of the Company and the circumstances of the employee. During such notice, the employee concerned shall be allowed the opportunity to attend interviews without financial disadvantage, however whole days to attend interviews shall not be allowed unless special authorisation is sought. Where the employee leaves this workplace without completing the required period of notice, the employer may retain an amount of monies equivalent to the amount of notice the employee would have worked out, had they remained until the end of the notice period.

## **CONSEQUENCES OF TERMINATION**

### ***Deliver up all property***

On termination of the Employment, however occurring, you will immediately deliver to the Company all property belonging to the Company or any of its related bodies corporate which is in your possession, including without limiting the foregoing, the Company's Documents, as outlined in Schedule D.

### ***No representations***

After termination of the Employment, however occurring, you will not represent yourself as being in any way connected with or interested in the business of the Company or any of its related bodies corporate.

### ***Resignation of Positions***

On termination of your employment, you will

- a) On request, forthwith relinquish any position in, or office of, the Company or any Group Company.
- b) If you are director of the Company or any Group company, relinquish your title and liberties as a director of the relevant Company without compensation for loss of your directorship.

## **DISPUTE RESOLUTION**

If a dispute arises out of, or relates to, this Agreement (including breach, termination, validity or subject matter of it) the parties will endeavour to settle the dispute by mediation administered by a mutually acceptable mediator. If the parties are unable to agree as to a suitable mediator, the mediation will be administered by Mediate Today Pty Limited A.C.N. 065 563 760 ("Mediate Today") or its equivalent.

If the dispute has not been settled within twenty eight (28) days (or such period as is agreed in writing by the parties) after the appointment of the mediator, the dispute will be submitted to expert determination administered by, and will be subject to the rules for binding expert determination of, Mediate Today or its equivalent.


The parties will accept the determination of the expert as final and binding. The expert will be a person agreed between the parties but, failing agreement, the expert will be a person appointed by Mediate Today. The expert will not be the same person as the mediator.

Any disputes regarding this Agreement will be heard in Sydney, New South Wales

Until a party has complied with the preceding provisions of this clause the party may not commence court proceedings relating to the dispute except that nothing in this clause precludes a party seeking injunctive relief from an appropriate court where failure to obtain that relief would cause irreparable damage to the party concerned.

## **COMPANY POLICIES AND PROCEDURES**

Whilst this Contract forms the basis of the employment relationship between the Employee and the Employer, additional benefits, entitlements, codes of practice, Company expectations and Company procedures, may be dealt with through the policies and procedures formally endorsed by the Trade Winds Group. Such policies and procedures shall also comprise part of the terms and conditions of this employment relationship. Such policies and procedures may be subject to change or variation by the Employer.





## FLEXIBILITY OF CONTRACT

In the circumstances where a transmission of business occurs, the Employer may seek to re-assign the terms and conditions of this Contract to another employing entity Involved in such transmission, subject to due process and notification.

## NO REPRESENTATION OR WARRANTIES BY THE COMPANY

This Agreement supersedes all prior agreements, representations and understandings (written, verbal or implied) relating to your employment by the Company. In addition you acknowledge that in entering into this Agreement, you have not relied on any representations or warranties made by the company, or any third party except as set out in the Agreement.

## NOTICE

A notice, or other communication required or permitted by this Agreement must be in writing, signed by the party giving it, and be delivered by hand or sent by pre-paid post or facsimile to the addressee.

## SURVIVAL

The covenants and agreements contained in the clauses titled "Conflict of Interest, Confidentiality, Restrictive Covenant/Non Solicitation, Proprietary Rights, Termination and Notice, of this Agreement will survive termination of your employment by the Company.

## WAIVER

The waiver of the breach of any term of this Agreement will not be a waiver of any other breach of that term or the breach of any other term.

## SEVERANCE

If any covenant, undertaking or condition of this Agreement is found to be void or unenforceable at law, that covenant, undertaking or condition will not affect any other term of this Agreement and, as far as possible, will be read down to the extent required to make it enforceable. If necessary, the parties will, in good faith, negotiate a valid and enforceable replacement term to express their intention.

## GOVERNING LAW

This Agreement takes effect, is governed by and shall be construed in all respects in accordance with the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales in respect of any matter or thing arising out of this Agreement or pursuant thereto.

## DEFINITIONS

In this letter:

"Related Bodies Corporate" has the meaning given to it in the Corporations Law.

"Documents" where ever occurring means and includes software (including source code and object code versions), firmware, hardware, manuals, books, diagrams, graphs, charts, projections, specifications, estimates, records, concepts, documents, materials, accounts, plans, formulae, designs, methods, techniques, processes, supplier lists, price lists, business cards, customer lists, market research information, credit cards, motor vehicles, correspondence, letters and papers of every description, including all originals and copies of and extracts from any of the same.

"Policies" mean the Company's Code of Conduct, Hours of Work & Overtime Policy, Occupational Health & Safety Policy, EEO & Grievances Policy and Leave Policies, and such other policies of the Company as may be developed from time to time and located on the J Drive on Solar 2, under the directory entitled Company Policies.

## ACCEPTANCE

### ENDORSEMENT OF THE PARTIES TO ALL TERMS AND CONDITIONS AS CONTAINED:

AS OFFERED BY:

  
Neville Zammit

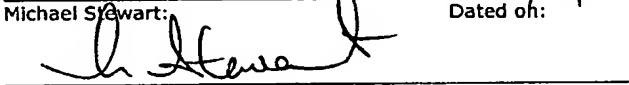
27<sup>th</sup> February 2003

AS ACCEPTED BY:

  
Michael Stewart:

13/3/03  
Dated on:

SIGNED:





**In the matter** of International patent  
application no. PCT/AU2003/000954

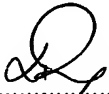
- and -

**In the matter** of United States patent  
application serial number 10/523,153

## **EXHIBIT**

The attached is Exhibit FF3 referred to in the Statutory Declaration of Frank Favretto declared on the    day of September 2005.

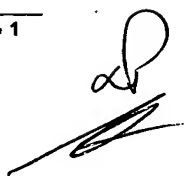
Before me:



.....  
*Signature of person before whom the declaration is made*

Kristen Perry  
Solicitor

MCC Centre, Sydney, Australia  
.....  
*Title of person before whom the declaration is made*



**DEED OF RELEASE**

BETWEEN

**TRADE WIND GROUP PTY LIMITED**  
ABN 003 607 074

AND

**TRADE WIND COMMUNICATIONS LIMITED**  
ABN 076 753 083

AND

**KEVIN LEVINE**

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**BETWEEN**      **TRADE WIND GROUP PTY LIMITED** ABN 003 607 074 of Level 3, 120  
Sussex Street, Sydney in the State of New South Wales (*the Company*)

**AND**            **TRADE WIND COMMUNICATIONS LIMITED** ABN 076 753 083 of Level 3,  
120 Sussex Street, Sydney in the State of New South Wales (*Trade Wind  
Communications*)

**AND**            **KEVIN LEVINE** of 36a Roe Street, North Bondi in the State of New South  
Wales (*Mr Levine*)

## RECITALS

- A. Mr Levine has been employed by the Company, a subsidiary of Trade Wind Communications from 14 October 1996 (*the Employment*).
- B. The Employment terminated on 12 December 2003 (*the Termination*).
- C. Disputes have arisen between the Company and Mr Levine concerning the Employment and the Termination including, without limitation, Mr Levine's alleged entitlement to a redundancy payment and an alleged consequential entitlement to a payment for long service leave on redundancy (*Disputes*).
- D. The Company and Mr Levine have agreed to settle the Disputes on the terms of this Deed.

## OPERATIVE PROVISIONS

### 1. TERMINATION

- 1.1 Mr Levine resigned as a Director of the Company on 28 November 2003.
- 1.2 The Employment terminated on 12 December 2003.

### 2. TERMINATION PAYMENTS

- 2.1 Mr Levine acknowledges that he has received all salary and statutory entitlements (if any) to annual leave and long service leave accrued or payable at the Termination on 12 December 2003.
- 2.2 Mr Levine acknowledges that the Company has reimbursed all his expenses relating to the Employment and that he has no other claim for reimbursement of expenses by the Company.
- 2.3 Mr Levine acknowledges that the Company has satisfied all its obligations under any salary sacrifice arrangement including, without limitation, any reimbursement to Mr Levine of unexpended payments received from Orix Australia Corporation Limited (ABN 79 002 992 881) in respect of motor vehicle registration (NSW) XNQ-735 and motor vehicle registration (NSW) WWZ-139.
- 2.4 Mr Levine acknowledges that all payments of superannuation in respect of any salary payable to him by the Company from time to time up to the Termination on 12 December 2003 have been paid to the superannuation fund or funds nominated by Mr Levine.

- 2.5 Mr Levine acknowledges receipt of the sum of \$83,296.46 paid by the Company to Mr Levine on or about 4 December 2003 being the amount after tax for gross payments for annual leave of \$32,061.54 (gross) and for termination of \$77,367.26 (gross) calculated as set out in Schedule 1 of this Deed.
- 2.6 Mr Levine and the Company agree that a further termination payment of \$27,161.75 as an eligible termination payment less applicable tax calculated as set out in Schedule 2 of this Deed (*the Payment*) is to be paid by the Company to Mr Levine on or before 15 June 2004.

### 3. PAYMENT

- 3.1 Without any admission of liability and provided the Company has received from Mr Levine a copy of this Deed properly executed by him, the Company is to pay Mr Levine the sum of \$27,161.75 as an eligible termination payment less applicable tax calculated as set out in Schedule 2 of this Deed) (*the Payment*) on or before 15 June 2004 by bank cheque drawn in favour of Kevin Levine.
- 3.2 Mr Levine acknowledges that the Payment is in full and final satisfaction of all claims made in or arising out of or in connection with the Employment or the Termination or the Disputes.
- 3.3 The Company is to use its reasonable endeavours to provide to Mr Levine within 14 days of the Payment being made an Individual Non Business Payment Summary and an ETP Payment Summary.

### 4. RELEASE

- 4.1 Mr Levine releases the Company and Trade Wind Communications (and their respective directors, officers and employees) from all claims made in or arising out of or in connection with the Employment or the Termination or the Disputes (except any claim arising out of this Deed).
- 4.2 The Company and Trade Wind Communications each jointly and severally release Mr Levine from all claims made in or arising out of or in connection with the Employment or the Termination or the Disputes (except any claim arising out of this Deed).

### 5. BAR TO FURTHER PROCEEDINGS

- 5.1 Mr Levine is entitled to plead this Deed as a bar to any proceedings commenced, continued or taken by any of the Company or Trade Wind Communications against Mr Levine in relation to the Employment or the Termination or the Disputes.
- 5.2 The Company and Trade Wind Communications and each of them are entitled to plead this Deed as a bar to any proceedings commenced, continued or taken by Mr Levine in relation to the Employment or the Termination or the Disputes.

**6. NON DISPARAGEMENT**

- 6.1 Mr Levine must not disparage or otherwise bring into disrepute the Company or Trade Wind Communications or any related company or any officer or employee of the Company or Trade Wind Communications or its related companies as a result of or in connection with the Employment or the Termination or the Disputes.
- 6.2 The Company and Trade Wind Communications jointly and severally agree not to disparage or otherwise bring into disrepute Mr Levine as a result of or in connection with the Employment or the Termination or the Disputes.

**7. CONFIDENTIAL INFORMATION**

- 7.1 Mr Levine acknowledges that:

- (a) the property of the Company and its related bodies corporate includes all trade and business secrets and other confidential information and documents relating to the affairs of business of the Company and its related bodies corporate or any person with whom he came into contact as a result of the Employment, or which came into his possession in the course of and by reason of the Employment, whether or not the same were originally supplied by the Company or its related bodies corporate (**Confidential Information**);
- (b) Confidential Information has been acquired by the Company or its related bodies corporate at the Company's or the related bodies corporate' initiative and expense; and
- (c) the Company and its related bodies corporate have expended effort and money in establishing and maintaining their customer base, employee skills and the Confidential Information.

- 7.2 Mr Levine further acknowledges that any information of any type acquired by him in the course of or incidental to his employment with the Company and its related bodies corporate regarding the business, finances, secrets, dealings transactions, affairs, property, policy, processes or activities of the Company and its related bodies corporate including without limitation all customer lists, designs or technical drawings, proofs and prints, computer software and programs, know how, ideas, diagrams, tables, marketing and sales procedure, pricing, accounting techniques, literary, artistic and personal information not in the public domain shall be treated as confidential information and subject to the terms of this deed, never to be disclosed to any parties.
- 7.3 Mr Levine undertakes not to use or disclose or publish any trade secrets, customer lists, product lists or Confidential Information belonging to the Company and its related body corporates which became known during the Employment.
- 7.4 This clause does not apply in respect of information which is publicly available or in respect of information that is reasonably expected that the public should already know.

**8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 Mr Levine acknowledges that:

- (a) the Company is the exclusive owner of all right, title and interest to all intellectual property rights including without limitation:
  - (i) copyrights, patents, trademarks, designs and similar industrial, commercial and intellectual property and including future copyright; and

- (ii) any patent, copyright, trademark design (and similar industrial, commercial and intellectual property) relating in any way to the emdirect process method and system for bulk communication of information to a single set of recipients via multiple delivery, media (fax, email, sms and surface mail) based on the recipients delivery preferences, and incorporating escalation, delivered as a web service.

created during the Employment whether created individually or jointly with any employee and/or contractor and/or subcontractor of the Company or any of its related bodies corporate.

- (b) that he will co-operate with the Company or any of its related bodies corporate in registering or otherwise protecting any intellectual property right created during the Employment; and
- (c) consents to all acts and omissions of the Company or of any its related bodies corporate occurring in relation to the moral rights (as defined in the Copyright Act (Cth) 1968) which Mr Levine may otherwise hold in any intellectual property right created during the course of the Employment.

## 9. CONFIDENTIALITY

- 9.1 Each party is to keep confidential the terms of this Deed and is not to disclose its terms except to its legal and financial advisers, auditors and directors and authorised officers and otherwise as may be required by law.

## 10. GENERAL PROVISIONS

- 10.1 This Deed shall not be varied except by written agreement of the parties.
- 10.2 The validity, construction and performance of this Deed shall be governed by the laws of the State of New South Wales.
- 10.3 Mr Levine acknowledges that he has had the opportunity to take legal advice about this Deed.
- 10.4 The waiver by either party of a right or default under this Deed shall not be deemed a waiver by such party of any subsequent or continuing default of a like or similar nature.
- 10.5 If any provisions or part of any provisions of this Deed is held by a court of competent jurisdiction to be void, invalid or otherwise unenforceable, then such provision or part thereof shall be deemed eliminated or modified to the extent which, in the Court's opinion, it is necessary to make the remainder of the clause enforceable.
- 10.6 In this Deed, unless the context otherwise requires:-
  - (a) "claim" means any claim including action, suit, cause of action, arbitration, money, debt, dues, costs, demand, verdict and judgment either at law or in equity or arising under the provision of any statute and whether or not the facts, matters and circumstances giving rise to such claim or claims are known or unknown to the parties at the date of this Deed;
  - (b) headings are for convenience only and do not effect interpretation;




- (c) a reference to a party to the Deed includes a reference to that party's heirs, executors, administrators, successors and permitted assigns;
- (d) the single includes the plural and the plural the single;
- (e) a reference to gender includes a reference to every other gender;
- (f) reference to dollar amounts are reference to Australian dollars;
- (g) a reference to any statute, ordinance or the law includes a reference to all regulations and any other enactments made under it or consolidations, amendments, re-enactments or replacement of it.
- (h) the term "related body corporate" has the meaning ascribed to that term in the Corporations Act, 2001.

Executed as a deed on

14 June 2004

**EXECUTED BY TRADE WIND GROUP PTY  
LIMITED** (ABN 003 607 074) pursuant to  
section 127(1) of the *Corporations Act 2001*



Signature of Authorised Person

DIRECTOR

Office Held

FRANK FAVRETTO

(Print) Name of Authorised Person



Signature of Authorised Person

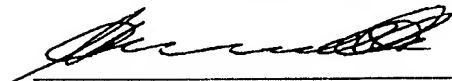
DIRECTOR

Office Held

PETER HAWKINS

(Print) Name of Authorised Person

**EXECUTED BY TRADE WIND  
COMMUNICATIONS LIMITED**  
(ABN 076 753 083) pursuant to section  
127(1) of the *Corporations Act 2001*



Signature of Authorised Person

DIRECTOR

Office Held

FRANK FAVRETTO

(Print) Name of Authorised Person



Signature of Authorised Person

DIRECTOR

Office Held

PETER HAWKINS

(Print) Name of Authorised Person

**SIGNED SEALED and DELIVERED** by  
**KEVIN LEVINE** in the presence of:



Signature of Witness

Shara Schreier-Joth

(Print) Name of Witness

  
Signature of **KEVIN LEVINE**

In the matter of International patent  
application no. PCT/AU2003/000954

- and -

In the matter of United States patent  
application serial number 10/523,153


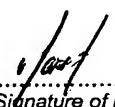
## Statutory declaration

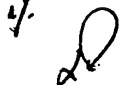
I, Neville Zammit, a citizen of Australia of 11 Dean Place, Acacia Gardens, NSW 2763, Australia do solemnly and sincerely declare as follows:

- 1 I was the Secretary of Trade Wind Communications Limited (Trade Wind Communications) from 21 October 2004 to 23 May 2005. Prior to 21 October 2004 I was the Financial Controller for Trade Wind Communications.
- 2 I am familiar with the technology that is described in international patent application number PCT/AU2003/000954 and US application serial number 10/523,153 (the technology). I have read the statutory declaration of Frank Favretto that is to be filed in relation to this matter and have personal knowledge of and agree with everything that is stated in paragraphs 1 to 10 of his declaration.
- 3 In response to Kevin Bryan Levine (Mr Levine) not being cooperative in relation to signing a declaration and power of attorney (the US declaration) for the purposes of US application serial number 10/523,153 (the US application), I was asked by Frank Favretto, Chairman of the Board of Directors of Trade Wind Communications, to contact Mr Levine to attempt to obtain his signature on the US declaration.
- 4 I called Mr Levine on 20 May 2005 and asked him to sign the US declaration and an assignment for the purposes of the US application.
- 5 Mr Levine responded that he did not want to execute the US declaration or any assignment. I then said to Mr Levine that Trade Wind Communications believed he was obliged to sign these documents under the terms of his Deed of Release. Mr Levine responded that he would think it over and get back to me.
- 6 I called Mr Levine again on each day of the 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> of May 2005, each time leaving a message on his voicemail requesting that he call me back. During this time I also sent Mr Levine an email requesting that he respond. A copy of the email I sent is attached as exhibit NZ1.
- 7 Mr Levine left a message on my voicemail on 6 June 2005. In that message Mr Levine stated that he was owed money by the company (it was clear to me that he referring to Trade Wind Communications or its subsidiaries) and wanted to be paid something if he signed. This was the first time that Mr Levine had alleged that any money was owing to him. I have made inquiries within Trade Wind Communications and have confirmed that no money is owed to Mr Levine and confirm that other than the statements that Mr Levine made in his voicemail message, Trade Wind Communications is not aware of any claim by Mr Levine that it owes money to him.
- 8 I believe that the conduct of Mr Levine constitutes a refusal to sign the subject US declaration.
- 9 I am not aware of any reason why Trade Wind Communications Limited is not entitled to derive full title to the US application from all of the inventors, including both Mr Stewart and Mr Levine.

- 10 I hereby declare that all statements made herein of my own knowledge are true, and that all statements made herein on information and belief are believed to be true; and further that these statements were made with the knowledge that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such wilful false statements may jeopardise the validity or enforceability of the application or any patent issued thereon.

And I make this solemn declaration by virtue of the Australian Statutory Declarations Act 1959 and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

Declared at Sydney	
this 29 <sup>th</sup>	
day of September	
2005, before me:	
	
Signature of person before whom the declaration is made	Signature of person making the declaration
Kristen Perry	Neville Zammit
Solicitor	
MLC Centre, Sydney, Australia	
Title of person before whom the declaration is made	Full name of declarant



**In the matter** of International patent  
application no. PCT/AU2003/000954

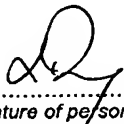
- and -

**In the matter** of United States patent  
application serial number 10/523,153

## EXHIBIT

The attached is Exhibit NZ1 referred to in the Statutory Declaration of Neville Zammit declared on the 29<sup>th</sup> day of September 2005.

Before me:

  
.....  
*Signature of person before whom the declaration is made*

Kristen Percy  
Solicitor  
MLC Centre, Sydney, Australia  
.....  
*Title of person before whom the declaration is made*

**From:** Neville Zammit [nzammit@connxion.com.au]  
**Sent:** Tuesday, 24 May 2005 1:57 PM  
**To:** 'kevin@basebackpackers.com'  
**Subject:** Patents

Hi Kevin

Not sure if you got the message I left you this morning on your mobile following our conversation on Friday, so I thought I would follow you up by email.

To file patent applications in some countries like the U.S., the application documents must be signed by all of the inventors. Accordingly, I would appreciate your cooperation in signing some of these documents.

It would be appreciated if you could please get back to me today. You can reach me anytime on my mobile on 0402 428 9425.

Kind Regards

Neville

=====  
 Neville Zammit  
 Chief Financial Officer & Company Secretary  
 ConnXion Limited

T: +612 9250 8807  
 F: +612 9250 8881  
 M: +61 402 428 925  
 E: [nzammit@connxion.com.au](mailto:nzammit@connxion.com.au)

=====  
 W: [www.connxion.com](http://www.connxion.com)  
 =====

This communication may contain CONFIDENTIAL or copyright information of ConnXion Limited or its related entities. If you are not an intended recipient, you MUST NOT keep, forward, copy, use, save or rely on this communication, and any such action is unauthorised and prohibited. If you have received this communication in error, please reply to this e-mail to notify the sender of its incorrect delivery, and then delete both it and your reply. Thank you. ConnXion Limited formerly trading as Trade Wind Communications.

1.8